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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,415	12/17/2003	Jorg Klosterhalfen	1238-16	8326
25881	7590	06/13/2006	EXAMINER	
EPSTEIN DRANGEL BAZERMAN & JAMES, LLP 60 EAST 42ND STREET SUITE 820 NEW YORK, NY 10165			ORTIZ, BELIX M	
			ART UNIT	PAPER NUMBER
			2164	

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/738,415	KLOSTERHALFEN ET AL.
	Examiner	Art Unit
	Belix M. Ortiz	2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 December 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-\_\_\_\_\_.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/17/059/20/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because, of the following reason:

The word "said" should not be used on the abstract. Appropriate corrections are required based on the guidelines provided below.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 is recites the limitation "the status" in line 3. There is insufficient antecedent basis for this limitation in the claim.

6. Regarding claim 1, the phrase "statuses" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). The claim goes from singular "status" to plural "statuses".

7. Regarding claim 1, the phrase "mostly" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

8. Regarding claims 2-10 are rejected under 35 U.S.C. 112, second paragraph, as dependent from rejected independent claim 1.

9. Claim 3 is recites the limitation "and/or" in line 2. There is insufficient antecedent basis for this limitation in the claim.

10. Regarding claim 3, the phrase "are adjusted" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). There is no explanation of how the adjustment is done.

11. Claim 5 is recites the limitation "the system" in line 1. There is insufficient antecedent basis for this limitation in the claim.

12. claim 6, the claim recite the limitation “its” render the claims indefinite because pronouns are not allowed. Only what is being referred by “it” should be set forth in the action.

13. Claim 8 is recites the limitation "the operation" in line 2 and "the status" in line 5. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 101***

14. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

15. Claim 1 is rejected under 35 U.S.C. 101 because we have held that the claimed subject matter does not fall within the definition of a “process” under § 101 and is an “abstract idea,” and, therefore, it is not a “practical application” of the plan because it does not produce a “concrete and tangible result”. The State Street test requires that subject matter be “useful” and “concrete” and “tangible”. While the claimed subject matter may be “useful” because it has some utility to society, this is not enough. Therefore, we hold that claims 1-30 are directed to nonstatutory subject matter because they do not recite a “practical application” or produce a “concrete and tangible result” under State Street.

See, State Street, 149 F.3d at 1374-75, 47 USPQ2d at 1602 (Fed.Cir. 1998); In re Toma, 575 F.2d 872, 877-78, 197 USPQ 852, 857 (CCPA 1978); In re Musgrave, 431 F.2d 882, 893, 167 USPQ 280, 289-90 (CCPA 1970). See also In re Schrader, 22 F.3d 290, 297-98, 30 USPQ2d 1455, 1461-62 (Fed. Cir. 1994) (Newman, J., dissenting); Paine, Webber, Jackson & Curtis, Inc.

v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 564 F. Supp. 1358, 1368-69, 218 USPQ 212, 220 (D. Del. 1983).

16. Regarding claims 2-10 are rejected under 35 U.S.C. 101, as being dependent from rejected independent claim 1.

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 1-10 are rejected under 35 U.S.C. 103(a) (Eff. Filing date of foreign application 2/27/2003) as being unpatentable over Vos et al. (2002/0091672) (Eff. Filing date of application 11/21/2001) in view of Leung et al. (U.S patent 6,282, 570) (Eff. Filing date of application 12/7/1998).

As to claim 1, Vos et al. teaches a method for real time maintenance of database contents, in particular of files of a relational database (see paragraphs 5 and 68), in particular DB2,

- wherein the status of database content is determined using a database-integrated status monitor (see figure 6, character 604 and paragraphs 66 and 95),
- wherein status data of the determined statuses is output in real time using said database-integrated status monitor (see paragraph 68), and

- wherein maintenance functions are mostly activated directly following a positive compare result (the claim limitation is optionally recited accordingly it does not hold any patentable weight).

Vos et al. does not teach wherein said output status data is analyzed and compared with comparison data.

Leung et al. teaches monitoring a large parallel database through dynamic grouping and sequential sampling (see abstract), in which he teaches wherein said output status data is analyzed and compared with comparison data (see column 1, lines 45-50 and column 4, lines 7-8).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Vos et al. by the teaching of Leung et al., because wherein said output status data is analyzed and compared with comparison data, would enable the method because, “Monitoring a non-parallel database generally includes collecting performance statistics of a database. The performance statistics can be used to calculate a performance value for a non-parallel database, using, for example, a predefined formula”, (see column 1, lines 45-50).

As to claim 2, Vos et al. as modified teaches the method characterized in that the comparison of status data with status threshold values is conducted, wherein said status threshold values represent data statuses indicating an execution of the maintenance functions for the respective database contents (see Leung et al., column 1, lines 45-50).

As to claim 3, Vos et al. as modified teaches the method characterized in that said status threshold values for different database content and/or groups of database content and/or different maintenance functions are adjusted respectively (see Leung et el., column 4, lines 8-11).

As to claim 4, Vos et al. as modified teaches the method characterized in that at least one rigid status threshold value is set, that at least one soft status threshold value is set, that the maintenance function is activated when the soft status threshold value is reached and further criteria apply, and that the maintenance function is activated immediately when the rigid status threshold value is reached (see Vos et al., paragraphs 52 and 74).

As to claim 5, Vos et al. as modified teaches the method characterized in that restrictions related to the system, time, data and/or application are defined for the execution of maintenance functions in which an immediate execution of a maintenance function is suppressed at least temporarily (see Leung et el., column 4, lines 8-11).

As to claim 6, Vos et al. as modified teaches the method characterized in that the real time activation of the maintenance functions causes direct execution, its transfer to a job scheduler, or a call of database utilities (see Vos et al., paragraphs 10-12).

As to claim 7, Vos et al. as modified teaches the method characterized in that the executed maintenance functions are logged and a maintenance log is produced (see Vos et al., paragraph 66).

As to claim 8, Vos et al. as modified teaches a device, set up to execute a method,

- with a database unit for the operation of a relational database (see Vos et al., paragraph

5),

- wherein said database unit comprises maintenance means for executing maintenance

functions (see Vos et al., paragraph 9), and

- monitoring means for monitoring and reading out status data about the status of

database content stored in said database unit (see Vos et al., abstract and paragraph 95),

- with a monitoring unit for monitoring said output status data (see Vos et al., paragraph

95),

-wherein said monitoring unit comprises means for analyzing status data and for

comparing status data with comparison data (see Leung et al., column 1, lines 45-50 and column

4, lines 7-8), and

- wherein said monitoring unit comprises output means for directly outputting

instruction for the activation of said maintenance means for executing a maintenance

utility (see Vos et al., paragraphs 9, 36, and 107).

As to claim 9, Vos et al as modified teaches a computer program with an implementation

of a method for a computer (see Vos et al., figure 1 and paragraph 34).

As to claim 10, Vos et al. as modified teaches a computer program product with a

computer program or with instructions for executing a method (see Vos et al., paragraph 36).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Belix M. Ortiz whose telephone number is 571-272-4081. The examiner can normally be reached on moday-friday 9am-5pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

bmo

June 5, 2006

*C. Rones*  
CHARLES RONES  
SUPERVISORY PATENT EXAMINER